

1 different law firms and litigation firms in
2 Dallas, and of course I make, schedule
3 appointments. And Chuck doesn't show up.

4 That's why I run around and do all
5 this. Then I write a memo that's--I saw it in
6 one of the exhibits that you all had. It was
7 a memo from me back to Mr. Austin in November
8 1998, when he shows up, interview the law
9 firms, and what happened--I recommended a
10 firm.

11 But they hire Weil, Gotshal &
12 Manges with T. Ray Guy and the associates
13 there. So Preferred is in court, three or
14 four, five times, and Mr. Austin is flying
15 now, flying in from California. All of a
16 sudden they've got money to handle this.
17 We're going to court every two weeks.

18 Q Do you know where that money came
19 from?

20 A Chuck. He got the money somehow.
21 I don't know where he got it.

22 Q Okay; go on.

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1 A A guy named Chuck Guskey. And I
2 mean we're--it's like you--you're battling
3 over this, you're battling over that, you're
4 battling over motions, they hire a law firm
5 who is really friendly with the judge. The
6 judge's name is Candace, Judge Candace Tyson.
7 She appoints a trustee. So all the licenses
8 go from where Preferred would have them, to
9 there--she appoints a receiver or trustee.
10 The trustee is now transferred all the
11 licenses.

12 Now the way the rules work, the
13 FCC came out with a public notice in August
14 1998, you had to construct these licenses by
15 December 28, 1998, or you'd lose them.

16 So Preferred had to go out and get
17 the financing, and order the equipment, and
18 get the equipment delivered, and deploy it and
19 test it, and if you're doing this properly,
20 have Sony, you know, radios per paired
21 frequency by December 28, 1998.

22 And this is like--now we're in

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1 like late November, even early December. And
2 they get--Matt got it done. He got it done.
3 They--

4 Q For 360 licenses?

5 A Well, you started out with three--
6 I think it was 336, was actually the number.
7 The Commission, in the August 1998 order,
8 divides the world into two parts. A
9 Goodman/Chan waiver licensees and
10 substantially similar to Goodman/Chan waiver
11 licensees, substantially similar facts, and
12 everybody else. So of 336 licenses, the
13 Commission cancels about 140 of them, right
14 off the bat.

15 Q For reasons related to
16 Goodman/Chan?

17 A Yes. In other words, you had to
18 jump through all these hoops. You had to have
19 filed a waiver request. You had to have filed
20 it in writing. You had to have filed it in
21 writing before the expiration of your eight
22 month construction period. It had to be

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1 exactly like Goodman/Chan.

2 If you weren't exactly like
3 Goodman/Chan--even if you did file, the
4 Commission was fighting with you.

5 Q All right. Just so I understand
6 it. You said that Charles Austin got it done.
7 I took that to mean that he got the build-out
8 that was required done for these site
9 licenses, and now you're telling me the
10 Commission canceled 140 of them.

11 Is that because he didn't get it
12 done as to those 140?

13 A I'm getting there.

14 Q Okay; sorry.

15 A I'm getting there. No, it's--you
16 know, it's kind a complicated. 140 of them
17 get canceled. So those don't get constructed.
18 In August, they get cancelled. Yes, before
19 you had to construct them, they got canceled,
20 and there wasn't any--you know, the company--I
21 don't know. He was making the decisions. But
22 those didn't get constructed. 196 did get

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1 constructed, according to things that I've
2 looked at, you know, documents I've looked at.

3 Of those 196, 110 of those
4 eventually get cancelled, even though they
5 were bought, even though they were
6 constructed, they got cancelled, and
7 eventually--

8 Q That was for--why were they
9 cancelled, to your knowledge?

10 A They were considered not to be
11 Goodman/Chan waiver licensees, were not
12 substantially similar. Preferred had a number
13 of filings through Kaufman with the Commission
14 challenging all this, went on for years as to
15 the 110.

16 Q But these were licenses that
17 didn't need to be constructed at that point?
18 They simply needed to be--

19 A No. They needed to be--both. You
20 needed to--you had to qualify--remember, if
21 you didn't qualify for--what happened--

22 Q If you didn't qualify for a

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1 waiver.

2 A You know, what the Commission did
3 after the Goodman/Chan waiver was--when it was
4 filed, is everything went into suspense, for
5 years, and the Commission didn't make a
6 determination until August 28, 1998. That's
7 when it said Goodman/Chan had four more
8 months, substantially similar had four more
9 months, everything else did have--they were
10 cancelled.

11 And what happened was there were
12 lots of--thousands of licenses that had
13 arguments where you could have been--you could
14 have still been good if you were constructed.
15 So Preferred tried to construct as many as
16 possible, have a chance, and a lot of them got
17 cancelled.

18 Back in--you know, if the
19 Commission hadn't cancelled those licenses,
20 Preferred would have had enough--I think Mr.
21 Austin testified to this in his deposition--
22 Preferred would have had enough site licenses

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1 to build a major system. It didn't need to go
2 into the auction, the subsequent auction,
3 auction 34. But that wasn't the case. When
4 the 110 got cancelled, then you had to go into
5 the auction.

6 Q So that's your explanation of how
7 Preferred came into existence, and how--

8 A Again, my understanding is--and
9 Matt was able to get--I was down there in
10 Puerto Rico with him at the time, for the
11 first ten days or so. He did a great job of
12 getting the equipment down there. Basically
13 Jay Bishop negotiated an agreement with Jerry
14 Setko. He put up a life insurance policy as
15 collateral. They borrowed the money,
16 actually, from the vendor. The equipment got
17 shipped down, got the phones, did everything
18 within the deadline.

19 So at that point, by December 31,
20 '98, Preferred had, it looked like 196
21 channels was going to be 86.

22 Q How did that compare to the

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1 picture of the footprint necessary to run the
2 operating system PCSI--

3 A If you had 196, you had a system.
4 You could build an iDEN system. With 86,
5 you're going to have to get more spectrum.

6 Q Okay. And they had 196 at that
7 point?

8 A Had 196, it looked like, at the
9 time.

10 Q Okay. And what happened after
11 that point?

12 A The FCC cancelled 110 of them.

13 Q For the reasons you suggested
14 before.

15 You mentioned the, when you
16 attempted to put together a trust for
17 yourself, so that you could have what you felt
18 was the legal distance you needed from
19 Preferred and Telecellular, that there was an
20 SEC order, and can you give us a little
21 background about that.

22 A Well, the SEC was investigating

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1 Express in '93, an informal investigation, and
2 Express provided thousands of pages of
3 documents, and different people went up and
4 testified. In 1994, there was a formal Order
5 of Investigation.

6 Eventually, I had--the SEC
7 attorney's name was Richard Morvillo. We
8 tried to negotiate a consent decree. The SEC
9 never would agree. They kept changing, asking
10 for more documents, or we never could reach an
11 agreement. I ran out of money, and the law
12 firm stopped representing me, so the SEC got
13 a default judgment in the D.C. Circuit,
14 District Court, and here, in September 1996,
15 I believe, and that became, that default
16 judgment became final in like March or April
17 of 1997.

18 Q And can you tell us what the
19 default judgment said, specifically. What the
20 terms were.

21 A It's a permanent injunction
22 against my violating the federal securities

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1 laws, and they imposed a fine of 11-, or 12-,
2 or \$13 million, which was the total amount
3 that was raised. What we were trying to
4 negotiate--

5 Q That was raised by Express?

6 A People involved with Express, yes,
7 sir, on two programs, two of the programs,
8 plus a lot of interest, and so forth.

9 We were trying to negotiate all
10 that out and work out an agreed resolution.
11 The Commission never would, never would do
12 that.

13 Q What did you understand the basis
14 of the investigation to be?

15 A Basically what the Commission was
16 challenging was the--we were raising money
17 through member managed limited liability
18 companies, and there was a number of cases, at
19 least in '91, '92, '93, that held that general
20 partnerships were not securities, interest in
21 general partnerships were not considered to be
22 securities under the Howie test.

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1 And what we did is we used a
2 number of managed limited liability companies
3 instead of general partnerships, and tried to
4 follow all the rules, particularly after--

5 Q Thinking what? That they would be
6 analogous, you mean?

7 A Yes.

8 Q Okay go ahead.

9 A And we were challenged in a couple
10 of states. We went to three state
11 administrative proceedings and hearings. One
12 was in Illinois, one was in Iowa and one was
13 in Georgia.

14 And we were fighting the
15 characterization of the interest in these
16 entities as securities. The SEC came in and
17 basically Preferred was--you know--and excuse
18 me, a Freudian slip--Express was out of
19 business. It's hard to go back and forth.

20 Q Express was out of business at
21 what point?

22 A By the time we were really

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1 negotiating with the Commission was really
2 '95, and I pled guilty in the criminal
3 proceeding, and was going to be incarcerated,
4 and there really wasn't anybody--people at
5 Express just stopped--you know, the company
6 stopped. So there wasn't anybody to negotiate
7 except me, and I didn't have any money. I was
8 out of money at the time, and so it never got
9 resolved, and the Commission got a default,
10 SEC got a default judgment, and that was the
11 end of it.

12 You know, we weren't able to
13 litigate with the SEC. You know--

14 Q What specifically would you have
15 been litigating?

16 A The status of the interest in the
17 limited liability companies.

18 Q Has that ever been resolved, to
19 your knowledge, how those interests were
20 treated by the SEC?

21 A Nobody ever got--nobody could ever
22 get to a--you know, you never get a trial

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1 because everybody runs out of money. There's
2 really no--you know, what the SEC attorneys
3 will tell you is you'd better settle because
4 it just--it's going to take too long, cost too
5 much.

6 Q And the question of the general
7 partnership interest--has that been resolved?

8 A Well, Mr. Bishop tried litigating
9 that and he lost in the Ninth Circuit. So you
10 couldn't get a court--the problem was the SEC
11 goes in, they can get a judge to issue an
12 asset freeze, a temporary injunction, and you
13 can't litigate successfully. There's no way
14 to practically--there's no way to win.
15 There's no way to proceed.

16 Q Because you then can't have funds
17 to--

18 A You've got no asset--you've got
19 not assets. You can't pay your attorneys.
20 You can't litigate. So it never gets--you
21 know, it never got beyond that. Bishop tried
22 litigating. He went--you know--he went up to

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1 the Ninth Circuit and he lost.

2 Q What was the context of Bishop's
3 litigation?

4 A He had a large general partnership
5 as opposed to member-managed limited liability
6 company.

7 Q And he was doing the same thing,
8 in effect?

9 A Oh, yes.

10 Q And his litigation in the Ninth
11 Circuit, was that a criminal case or was that
12 a civil case?

13 A Civil. Civil.

14 Q Do you know specifically -- well,
15 I'm sure you do know. The SEC order
16 specifically -- what was its basis and what
17 its result vis-a-vis your activities? In
18 other words, what did that allow you to do and
19 what did it not allow you to do?

20 A It doesn't allow you to violate
21 the federal securities laws. They got an
22 administrative order that precludes me from

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1 practicing securities law before the
2 Commission, the SEC.

3 Q Legally, or -- you mean as an
4 attorney?

5 A As an attorney. Yes, sir.

6 Q And were you still an attorney at
7 that point?

8 A Yes, sir.

9 Q Okay. Did there come a point when
10 you were debarred?

11 A In Georgia and in Texas. Yes,
12 sir.

13 Q And what were those debarment
14 proceedings?

15 A Based on the guilty plea in
16 federal court in 1995.

17 Q And what about the state court
18 proceeding? That was much later?

19 A That was, yes, much later.

20 Q How much longer, after the guilty
21 plea in federal court, were you debarred?

22 A In Georgia -- Georgia was in '95,

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1 and in Texas, it was actually in early '97.

2 Q What about in Tennessee?

3 A I never was disbarred.

4 Q Okay. Do you maintain a license
5 to practice law in Tennessee?

6 A It's not currently active but I
7 can file, do some CLE work, and regain the
8 license. Yes, sir.

9 Q And are you attempting to do that?

10 A Yes. I am. At this point I'm
11 going to try to regain the licenses in Georgia
12 and Texas as well. It's been a long time.
13 About 13 years, 14 years.

14 Q Okay. And the debarments were
15 based specifically just on the conviction and
16 the plea?

17 A Yes, sir.

18 Q And the SEC order was based on
19 what, exactly? What caused the SEC to target
20 you?

21 A Well, we were marketing a large
22 member-managed limited liability company. At

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1 the time, the SEC was going after -- there was
2 40 or 50 different companies that were
3 promoting -- whether it was wireless cable or
4 specialized mobile radio, or private carrier
5 paging or -- there were a number of different
6 things, and a lot of folks were selling either
7 large general partnerships, like Continental
8 Wireless was -- that was Jay Bishop's company-
9 -or most of them were wireless cable. There
10 were some specialized mobile radio programs.

11 And the SEC was trying to preclude
12 anyone from offering these types of interest
13 to the public.

14 Q And why is that, if you know?

15 A Well, in most cases, well, they
16 thought that they were -- everyone was selling
17 an unregistered security. They were trying to
18 preclude folks from doing that.

19 Q So it was simply the nature of the
20 interest that was being sold, that attracted
21 the SEC's attention, to your knowledge?

22 A Well, it got to where you had 40

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1 or 50 different groups raising money this way,
2 and they were raising hundreds of -- you know,
3 collectively, they were raising hundreds of
4 millions of dollars.

5 So either you were going to
6 prevent this, or it was going to be the way
7 that a lot of folks raised money, and, you
8 know, you had all kinds of different -- some
9 people were, you know, raising money for
10 something that was very valuable, and other
11 folks were raising money for things that
12 weren't very valuable, and some folks were
13 raising money for things that didn't even
14 exist.

15 Q So, in other words, this was a
16 vehicle that was --

17 A It's like the Wild West.

18 Q Right. But it was a vehicle that
19 the SEC knew to be sort of fraught with the
20 possibility of fraud. Is that your
21 understanding?

22 A Well, there was a lot of fraud

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1 that occurred.

2 Q Okay. Do you have any idea how
3 much, how much money was lost as a result?

4 A You just can read reports. I
5 don't have any idea.

6 Q And to go back a little bit, what
7 did you feel was the reason that the FBI
8 targeted you, initially, for your federal
9 conviction?

10 A Part -- most of it had to do with
11 the fact that Mr. Guhl kept running--he wanted
12 to go back and become associated and be
13 involved with Gaubert's son, and he just
14 pulled us within -- the only reason they were
15 paying -- I could posit all kinds of theories,
16 but I think really what was going on was we
17 kept putting -- Guhl kept dragging us in, or
18 putting us in a situation where they were
19 focusing on Gaubert and Gaubert's son, and we
20 got their -- we crossed -- we got on the radar
21 that way, and --

22 Q You felt it was your association

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1 with those guys that caused them to litigate?

2 A That's the only way we were ever
3 going to have a problem, unless -- we would
4 have had a situation with the Securities and
5 Exchange Commission anyway because everybody
6 had that occur, sooner or later.

7 But I don't believe we had a
8 criminal problem, except for Guhl continuing
9 to want to be involved with those people, and
10 they were after the elder Gaubert. They were
11 after the guy for years, and he was apparently
12 just a very big target. We actually got a
13 copy of the FBI -- I think they're called 302s
14 -- and most all of it had to do with that.
15 Very little else.

16 Q Why did they eventually decide to
17 trade him for you? In other words, what --

18 A Oh, they didn't trade. They got
19 Mr. Gaubert.

20 Q How long a sentence did he
21 receive? What kind of sentence?

22 A He got a sentence for, I believe

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1 it was bankruptcy fraud. They went well --
2 well past us.

3 Q So ultimately, do you know what
4 kind of sentences those individuals served?

5 A No, sir. No.

6 Q Did you lose complete contact with
7 them?

8 A I never really had -- you know,
9 Mr. Guhl was the only connection with them,
10 tell you the truth. I never --

11 Q But the other individuals that you
12 mentioned, who also in effect turned, gave
13 evidence against you, do you know what kind of
14 sentences they received?

15 A I know what kind a sentences they
16 got.

17 Q Could you tell us what those are.

18 A One got 11 months in a halfway
19 house and one guy got about 18 months, and he
20 had some prior --

21 Q But these were not the big fish
22 that the FBI were looking for, ultimately?

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1 Those two fellows?

2 A No. They were looking -- they
3 were trying to get me.

4 Q Well, I guess that's my question.

5 A I was the big one.

6 Q Why you?

7 A I was the big fish.

8 Q Why?

9 A Why?

10 Q Yes.

11 A I don't know.

12 Q You have no idea?

13 A Nobody bothered to explain it to
14 me.

15 Q Not your attorney either?

16 MR. SILVA: How would he know why
17 the FBI is targeting him, if they did?

18 MR. OSHINSKY: I'm just asking.

19 MR. SILVA: Well, I think he
20 answered -- he doesn't know.

21 THE WITNESS: I really don't know.

22 You know, I wasn't somebody who had a lot of

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1 familiarity with this. I kind a went into
2 shock and, you know, I thought things worked
3 the way you were taught in law school. But
4 things don't work that way, I found out.

5 BY MR. OSHINSKY:

6 Q Can you tell us about your
7 relationship with Jerry Bishop, who you've
8 mentioned in relation to both of these --

9 A Jay?

10 Q I'm sorry. Not Jerry. Jay
11 Bishop.

12 A Jay was someone that you heard of.
13 He was -- I can tell you what I learned about
14 him. He was one of the three co-owners of
15 Continental Wireless.

16 Q I'm sorry. Let me stop you there
17 for a second. I had a question that was in my
18 head and I lost my train of thought. So
19 before we go on to Jay Bishop. The interest
20 that you sold, that were the subject of the
21 SEC investigation, and you said they were
22 general partnerships, I think?

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1 A They were managed limited
2 liability companies.

3 Q I'm sorry. That's right. Akin to
4 general partnerships. How much money did you
5 raise from those?

6 A About 7- or \$8 million.

7 Q What ultimately became of that
8 money?

9 A One program, they lost their
10 money. The other program, they invested the
11 money in Chadmoore Wireless, and it was the
12 initial source of money for Chadmoore
13 Wireless, and Chadmoore eventually was sold
14 for \$130 million, and I don't know how much
15 money they made from that.

16 Q In other words, the interest --
17 part of the interest that you sold, in what
18 you're referring to as one of the programs,
19 was invested in Chadmoore Wireless?

20 A It was -- became Chadmoore
21 Wireless. Yes, sir.

22 Q And then when that company was

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1 sold, those individuals may have profited from
2 that?

3 A I don't know. They certainly
4 should have.

5 Q Well, what was your association
6 with Chadmoore Wireless?

7 A Didn't have any.

8 Q What was your function in the --

9 A No, it was just that -- this was a
10 client.

11 Q You were creating this, in other
12 words?

13 A Yes. We created a limited
14 liability company, raised money for it. What
15 happened was that they took the money, instead
16 of buying certain licenses, they invested in
17 Chadmoore Wireless and became minority owner
18 of Chadmoore Wireless and Chadmoore was sold
19 to Nextel.

20 Q But once you created this LLC, you
21 had nothing further to do with it?

22 A No. No, sir.

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